

**CORRECTED COPY**

(13)  
No. 83-2004

Supreme Court, U.S.

FILED

JUN 4 1985

ALEXANDER L. STEVAS  
CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1984

**MATSUSHITA ELECTRIC INDUSTRIAL Co., LTD., et al.,**  
*Petitioners*

v.

**ZENITH RADIO CORPORATION and**  
**NATIONAL UNION ELECTRIC CORPORATION**

*ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE THIRD CIRCUIT*

**MOTION FOR LEAVE TO  
FILE BRIEF AMICUS CURIAE**

**and**

**BRIEF FOR THE GOVERNMENT OF JAPAN AS  
AMICUS CURIAE IN SUPPORT OF PETITIONERS**

**NOBUO MATSUNAGA**

Ambassador Extraordinary  
Plenipotentiary of Japan  
Embassy of Japan  
2520 Massachusetts Ave., N.W.  
Washington, D.C. 20008

**STEPHEN M. SHAPIRO**

MAYER, BROWN & PLATT  
231 South LaSalle Street  
Chicago, Illinois 60604  
(312) 782-0600  
*Counsel of Record for  
The Government of Japan*

June 4, 1985

**In the Supreme Court of the United States**

OCTOBER TERM, 1984

---

No. 83-2004

---

MATSUSHITA ELECTRIC INDUSTRIAL Co., LTD., *et al.*,  
*Petitioners*

v.

ZENITH RADIO CORPORATION and  
NATIONAL UNION ELECTRIC CORPORATION

---

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE THIRD CIRCUIT

---

**MOTION FOR LEAVE TO  
FILE BRIEF AMICUS CURIAE**

---

Pursuant to Rule 36.3 of the Rules of this Court, the Government of Japan respectfully moves for leave to file the attached brief as amicus curiae in support of reversal of the judgments of the United States Court of Appeals for the Third Circuit. This case raises issues of great importance to the relationship between the United States and Japan, and the Japanese Government wishes to ensure that the Court is

(i)

fully apprised of its views, as set forth in the attached amicus curiae brief. Petitioners have consented to the filing of this brief; respondents have not.

For the reasons stated, and in the interest of strengthening bilateral relations between Japan and the United States, the Government of Japan requests that the Court receive and consider the attached brief.

Respectfully submitted,

STEPHEN M. SHAPIRO

MAYER, BROWN & PLATT  
231 South LaSalle Street  
Chicago, Illinois 60604  
(312) 782-0600

*Counsel of Record for  
The Government of Japan*

June 4, 1985

## QUESTIONS PRESENTED

The Government of Japan will address the following questions:

1. Whether a duly issued statement of a foreign government, attesting that it directed its citizens to pursue certain conduct restricting export trade as an exercise of its sovereign power, may be disregarded by a court of the United States and, if not, whether that court may adjudicate the veracity of such a foreign government statement.

2. Whether a court of the United States may treat as features of an unlawful conspiracy actions of foreign corporations taken in their home country pursuant to directions given by their government for the implementation of its foreign trade policy.

# TABLE OF CONTENTS

	Page
MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE .....	i
QUESTIONS PRESENTED .....	iii
INTEREST OF THE AMICUS CURIAE .....	1
STATEMENT .....	3
DISCUSSION .....	5
CONCLUSION .....	10
APPENDIX:	
DIPLOMATIC NOTES VERBALE FROM THE EMBASSY OF JAPAN TO THE DEPARTMENT OF STATE, DATED MAY 29, 1984, AND OCTOBER 19, 1984 .....	1a
STATEMENT OF THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY OF THE GOVERNMENT OF JAPAN	
Letter From The Department Of State To The United States District Court For The Eastern District Of Pennsylvania, June 9, 1975 .....	6a
Letter From The Embassy Of Japan To The Department Of State, April 25, 1975 .....	8a
Statement Of The Ministry Of International Trade And Industry Of The Government Of Japan (MITI Statement) .....	9a
Certification By The Embassy Of Japan, April 23, 1979 .....	15a
Letter From The Embassy Of Japan To The United States District Court For The Eastern District of Pennsylvania, July 11, 1980..	16a

**In the Supreme Court of the United States**

OCTOBER TERM, 1984

---

No. 83-2004

---

MATSUSHITA ELECTRIC INDUSTRIAL Co., LTD., *et al.*,  
*Petitioners*

v.

ZENITH RADIO CORPORATION and  
NATIONAL UNION ELECTRIC CORPORATION

---

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE THIRD CIRCUIT

---

BRIEF FOR THE GOVERNMENT OF JAPAN AS  
AMICUS CURIAE IN SUPPORT OF PETITIONERS

---

TO THE HONORABLE, THE CHIEF JUSTICE AND THE  
ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME  
COURT:

The Government of Japan submits this brief as  
amicus curiae in support of reversal of the judgments  
of the Court of Appeals.

**INTEREST OF THE AMICUS CURIAE**

The Japanese Government has a vital interest in  
defending the legitimate exercise of its sovereign  
power in regulating and controlling its foreign trade.



In order to moderate the effects of Japanese exporting activity upon the markets of its trading partners, the Japanese Government has from time to time required Japanese nationals to enter into agreements and to observe regulations restricting exports from Japan to the United States and elsewhere. In the instant case, the Japanese Government formally advised the District Court that the export control agreements and regulations challenged in this proceeding were required by the Government of Japan, pursuant to the relevant Japanese law, as an exercise of Japan's sovereign regulatory power over Japanese exports. On appeal, the Court of Appeals disregarded the Japanese Government's Statement and questioned whether those export agreements and regulations were in fact mandated by the Japanese Government.

In taking this position, the Court of Appeals ruled that the trier of fact on remand could make findings contrary to the Japanese Government Statement and that the agreements and regulations in question could constitute or be treated as "features" of a violation of United States antitrust laws. The court's ruling, by threatening to penalize Japanese nationals with treble damages for complying with sovereign mandates of their government to enter into export control agreements in their home country, would adversely affect the ability of Japan both to implement its own trade policy and to cooperate with the United States Government in the implementation of its trade policy. The Government of Japan is deeply troubled by this intrusion on the exercise of its sovereign powers and respectfully urges this Court to reverse the judgments below.

### STATEMENT

The Ministry of International Trade and Industry ("MITI"), an agency of the Japanese Government, has the authority and responsibility to implement and enforce the basic international trade policies of Japan under the Japanese laws concerned, including the Law Concerning the Establishment of the Ministry of International Trade and Industry, the Foreign Exchange and Foreign Trade Control Law, and the Export and Import Transaction Law. Pursuant to its authority, MITI has, at various times, directed Japanese manufacturers and exporters to enter into agreements and to adopt and observe regulations controlling and limiting the price, quantity, number of customers and other terms and conditions of exports from Japan to certain foreign markets, including the United States. Among the many products covered by such export controls were radios (1958-1973), television receivers (1963-1973), and tape recorders (1965-1967).

In 1975, after becoming aware of the lawsuits filed under the United States antitrust and antidumping laws by National Union Electric Corporation and Zenith Radio Corporation against a number of Japanese consumer electronic product manufacturers and exporters, lawsuits which, among other things, challenged the agreements and regulations concerning the consumer electronic products described above, the Government of Japan transmitted a formal statement to the United States District Court for the Eastern District of Pennsylvania. (App. *infra*, 6a-17a) (hereinafter "Japanese Government Statement" or "Statement").<sup>1</sup> That Statement, certified directly to

<sup>1</sup> "App." refers to the Appendix attached to this brief.

the District Court in 1980 by the Ambassador of Japan as *amicus curiae* (*id.* at 16a-17a), is a matter of record in this proceeding.

By its 1975 Statement, the Japanese Government informed the District Court that the minimum export price and other agreements and regulations concerning the exportation of television receivers from Japan, which were in effect from 1963 to 1973, came into existence pursuant to the direction of the Government of Japan in order to assure the orderly development of Japan's export trade, and that those agreements and regulations constituted an integral part of the foreign economic and trade policy of the Japanese Government. (App. *infra*, 13a-14a.) In March of 1981, the District Court granted summary judgment for the defendants on all counts, finding it unnecessary to reach the "act of state" and "sovereign compulsion" issues raised by the Japanese Government Statement because there was no evidence from which the alleged conspiracy to fix low export prices could properly be found or inferred.

On December 5, 1983, the United States Court of Appeals for the Third Circuit reversed and remanded the case for trial. *In re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 238 (3d Cir. 1983), *cert. granted*, 105 S. Ct. 1863 (1985). Never mentioning the 1975 Japanese Government Statement, the Court of Appeals held that there was doubt as to whether the minimum export prices and customer registration requirements (the so-called "five-company rule"), which were the subject of the export control agreements and regulations mentioned above, had in fact been mandated by the Japanese Government. The court also held that those minimum export prices and customer registration requirements could constitute or be "features" of an antitrust violation for

which plaintiffs could obtain an injunction and recover treble damages. The Court of Appeals stated that those agreements and regulations may only have been sponsored or "encouraged" by the Japanese Government, 723 F.2d at 310, that "there is no record evidence suggesting that the five-company rule originated with the Japanese Government," *id.* at 315, and that at trial the finder of fact could conclude that the Japanese Government's export control arrangements "merely provided an umbrella under which the defendants . . . fixed their own export prices." *Id.* These rulings were in direct conflict with the 1975 Japanese Government Statement.

#### DISCUSSION

1. As declared in the 1975 Japanese Government Statement and in the diplomatic Notes Verbale transmitted to the United States Government in May and October of 1984 (App. *infra*, 1a-4a, 5a), the Japanese Government hereby reaffirms that the export activities of the petitioners which the Court of Appeals cited as central "features" of the alleged conspiracy to export television receivers to the United States at artificially low prices—including the agreements and regulations concerning the minimum export price and the five-company rule—are activities that were specifically directed and comprehensively supervised by the Japanese Government to carry out its foreign economic and trade policies.

The Court of Appeals' rulings that the trier of fact may conclude that the Japanese Government "merely provided an umbrella under which defendants . . . fixed their own export prices," and that there is doubt whether the minimum export prices "were in fact determined by the Japanese Government," 723 F.2d at



315, directly contradict the 1975 Japanese Government Statement that its "direction and supervision concerning minimum prices . . . and other matters were exercised continuously from 1963 until February 28, 1973 when such exporting arrangements were terminated." (App. *infra*, 13a). Moreover, the Court of Appeals' ruling is inconsistent with the Japanese Government Statement that the agreements and regulations concerning the minimum export price and other matters were directed to assure "orderly exportation to avoid the possibility of trade conflicts." (App. *infra*, 13a). Similarly, the court's conclusion that there was "no record evidence" that the five-company rule originated with the Japanese Government directly contradicts the 1975 Japanese Government Statement that all of the export control agreements and regulations involved "in these lawsuits" came into existence "pursuant to the direction of MITI." (App. *infra*, 9a).

As the 1975 Japanese Government Statement makes clear, any attempt by petitioners to avoid the minimum export price schedules or five-company rule by exporting without regard to the applicable controls would have contravened the directive of MITI, a directive that was enforceable, if disregarded, pursuant to Japanese Cabinet Order and which, in fact, had "a compulsory power equivalent to law." (App. *infra*, 12a). Indeed, even if any of the petitioners had attempted to withdraw from the export control arrangements, they would not have been allowed to export to the United States unless they complied with MITI's directive. As the 1975 Statement explains, "[o]nce MITI has decided upon the trade policy measures to be taken and has directed the establishment of appropriate Arrangements under the Export and Import Trading Law for this purpose, the

Japanese industries involved have in fact no alternative but to establish them. Therefore the Arrangements entered into under the Export and Import Trading Law in compliance with the direction of MITI are not private agreements in effect and are no less than the implementation of the foreign trade policy of MITI, despite their form as agreements made among private parties." (App. *infra*, 12a-13a).

2. The export controls in question here only regulated conduct in Japan. They did not limit the customers to whom the U.S. importers (including the U.S. subsidiaries of the petitioners) could resell the exported goods once they reached the United States, or the prices at which such resales could be effected. It is the position of the Japanese Government that, when the exercise of a state's sovereignty involves only control of the activity of its own nationals within its territory with respect to its own export trade, foreign courts should not question or punish such activity. Therefore, such business conduct by Japanese nationals pursued within Japanese territory relating to Japanese exports and required by the Japanese Government can neither constitute nor be considered by American courts and juries as a "feature" of an alleged unlawful antitrust conspiracy.

It is also the position of the Government of Japan that the formal representations of foreign governments concerning their sovereign acts should be entitled to conclusive effect. By holding that the finder of fact may conclude that the actions of petitioners in entering into the minimum export price agreements and export regulations involved herein were voluntary rather than mandated by the Government of Japan, the Court of Appeals has improperly failed to give conclusive effect to the formal declaration of the Japanese Government. Once a friendly foreign



nation has declared the substance and scope of its own domestic law and governmental activity, a United States court is to respect that declaration.

One of the fundamental attributes of national sovereignty is the conduct of foreign relations, including foreign economic and trade relations. The Government of Japan, like the Government of the United States, is entitled to exercise its sovereignty in this regard according to its own law and policy when it controls only the activity of Japanese nationals within Japanese territory with respect to Japan's export trade. This sovereign right would be seriously impaired by the Court of Appeals' ruling that, despite the 1975 Japanese Government Statement, there are triable issues of fact concerning the role of the Japanese Government in directing and effectuating the export control agreements and regulations involved herein, 723 F.2d at 310, 315, and that those export controls might be found to constitute or be a "feature" of the alleged conspiracy in violation of United States laws. *Id.* at 305-06.

Allegations that petitioners also engaged in other conduct, which was not compelled, do not affect this conclusion. Whenever foreign nationals' conduct of entering into export arrangements within their home country compelled by a foreign government acting within its sovereignty forms *any part* of a finding or inference of illegal activity, the sovereignty of the foreign government is improperly challenged.

Government-directed export control arrangements, such as those challenged by respondents in this case, are frequently adopted at the urging of the United States for the purpose of creating a period of trade stability. See Brief for the United States as *amicus curiae* in support of the petition for a writ of

*certiorari*, at 17. Unless the trading partners of the United States can be confident that such arrangements will not subject their citizens to private anti-trust liability before a United States court, the implementation of their trade policies vis-a-vis the United States will be significantly impaired.

Given the necessity of protecting their citizens against such unfair consequences, foreign governments can implement their foreign trade policy through export controls only if their formal representations to United States courts as to their law and sovereign acts are given conclusive effect, and government-mandated restrictions on exports cannot be made the basis or a "feature" of an unlawful conspiracy charge. Failure to accept as conclusive a formal governmental representation that export restraints were government-mandated and treating them as "features" of an unlawful conspiracy would seriously increase the likelihood of private suits against the companies involved, imposing on them the costs and burdens of litigation, the threat of adverse judgments and consequent pressure to settle ill-founded claims, and as a result, threaten the ability of foreign governments to cooperate with the United States in the implementation of U.S. trade policy.

Because this matter goes to the heart of national sovereignty, it is not a concern unique to the Government of Japan. The Court of Appeals' decision has led the Governments of Australia, Canada, France, Korea, Spain and the United Kingdom to submit diplomatic notes to the Department of State, all of which express concern over the court's disregard of a sovereign nation's representations as to the export controls imposed upon its nationals under its own domestic law. See Diplomatic Notes lodged with the

Clerk of the Court by the Solicitor General in connection with the Brief for the United States as *amicus curiae* in support of the petition for a writ of *certiorari*. As those diplomatic communications indicate, such disregard by a United States court would impair the sovereign right of other nations and is harmful to trade relations between the United States and its major trading partners. The Government of Japan fully concurs with the views expressed by those governments, as well as the Government of the United States in its brief *amicus curiae* in support of *certiorari*.

### CONCLUSION

The Government of Japan wishes to ensure that this Court is fully apprised of its view that the decision of the Court of Appeals misapprehends Japanese legislation and directly impairs the ability of the Japanese Government, in the exercise of its sovereign power, to promote future economic and trade relations between our countries. For the reasons stated, and in the interest of close bilateral economic relations between the United States and Japan, the Government of Japan respectfully requests that the erroneous judgments of the Court of Appeals be reversed.

Respectfully submitted.

NOBUO MATSUNAGA

Ambassador Extraordinary  
Plenipotentiary of Japan  
Embassy of Japan  
2520 Massachusetts Ave., N.W.  
Washington, D.C. 20008

STEPHEN M. SHAPIRO

MAYER, BROWN & PLATT  
231 South LaSalle Street  
Chicago, Illinois 60604  
(312) 782-0600

*Counsel of Record for  
The Government of Japan*

June 4, 1985

# **APPENDIX**



## APPENDIX

EMBASSY OF JAPAN  
WASHINGTON

May 29, 1984

## Note Verbale

E-43

The Embassy of Japan presents its compliments to the Department of State, and, with reference to the decision of December 5, 1983, by the United States Court of Appeals for the Third Judicial Circuit in *IN Re: Japanese Electronic Products Antitrust Litigation* (D.C. MDL. No. 189), has the honor to state the views of the Government of Japan on this subject as follows:

1. The Government of Japan has possessed a keen interest in this case, not only because it is highly questionable that a United States court should make a decision on Japanese corporations' actions which were taken within Japanese territory pursuant to the directions given by the Government of Japan for the implementation of its important trade policy, but also because a decision of U.S. court on this case could seriously hamper the smooth execution of the trade policy of the Japanese Government.

The Government of Japan wishes to express its deep concern for the above-mentioned U.S. court decision of December 5, 1983, and to clarify its position regarding the decision. The Japanese Government also requests the Government of the United States to lend its kind cooperation as stated in paragraph 4 below from the viewpoint of developing further the amicable, cooperative trade relations between Japan and the United States.

2. In connection with the proceedings of this case, the Government of Japan transmitted a formal Statement in April, 1975, to the Federal District Court for the Eastern District of Pennsylvania through the Embassy of Japan and the U.S. Department of State. The Statement established the fact that the price agreements among certain Japanese manufacturers of consumer electronic products and the regulations on registration of related distributors by the Japan Machinery Exporters Association (hereinafter referred to as "JMEA") in question came into existence pursuant to the mandatory directions given by the Government of Japan in accordance with the Export and Import Transaction Law and the Foreign Exchange and Foreign Trade Control Law.

Despite the transmission of the said Statement by the Government of Japan, the Court of Appeals, in its decision, made no reference to the Statement, or the related supplementary documents transmitted thereafter, and seemed to question the above-mentioned fact confirmed in the Statement by the Government of Japan.

The Government of Japan hereby reaffirms that, by entering into minimum price agreements with respect to export of television receivers and by adopting the JMEA regulations (including the so-called "five-company rule", which, among other things, served to control the quality of exported products), the Japanese corporations in question were acting pursuant to specific mandatory directions of the Government of Japan, and also that the Television Export Council, the Television Export Examination Committee and the Television Division of the JMEA were established, pursuant to the directions of the

Government of Japan, for carrying out and administering those agreements and regulations.

3. Moreover, the decision, of the Court of Appeals is not consistent with the view of the Antitrust Division of the United States Department of Justice that the agreements and regulations, as ordered by the Government of Japan, would not give rise to violations of United States law. Such view was expressed, for example, in the letter of answer from Mr. Donald I. Baker (then Assistant Attorney General, Antitrust Division) to Senator Edward M. Kennedy (then Chairman of Subcommittee on Administrative Practice and Procedure) dated February 15, 1977. The decision is also inconsistent with the policy of the Antitrust Division that international comity should be taken into account in applying U.S. antitrust law.

Therefore, if the Japanese firms in question should be held liable, it means imposing improper penalties on those who followed the directions of the Government of Japan and contributed to prevent "torrential increase" of exports into the United States. They have, in fact, already been improperly penalized by the action itself. Besides, this unfortunate situation could very well create extensive feelings of frustration among the Japanese public.

4. The decision of the Court of Appeals, which has considerably increased uncertainty in the trade relations between Japan and the United States, needs to be reviewed promptly by the United States Supreme Court. The Government of Japan understands that the defendants in the proceeding will file a joint petition for *certiorari* on or before June 7, 1984.

The Government of Japan expects that the Government of the United States fully understands the

position and concerns of the Government of Japan as stated above, and, requests the Government of the United States to file an *amicus curiae* brief before the United States Supreme Court in order to secure a proper conclusion by the Supreme Court, and also request it to take all other appropriate measures for the solution of this unfortunate situation.

The Embassy of Japan avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

EMBASSY OF JAPAN  
WASHINGTON

October 19, 1984

Note Verbale

E-79

The Embassy of Japan presents its compliments to the Department of State and has the honor to refer to the October 1, 1984 request of the United States Supreme Court to the Solicitor General of the United States requesting the views of the United States with regard to the case styled *Matsushita Electric Industrial Co., Ltd., et al. v. Zenith Radio Corp., et al., No. 83-20003*. The Embassy of Japan has further the honor to re-transmit as per attached the Note Verbale, dated May 29, requesting the Government of the United States to file an *amicus curiae* brief before the United States Supreme Court that will secure a review and a proper conclusion by that Court of the decisions of December 5, 1983 by the United States Court of Appeals for the Third Judicial Circuit in *In Re: Japanese Electronic Products Anti-trust Litigation* (D.C. M.D.L. No. 189), and requesting the Government of the United States to take all other appropriate measures for the solution of this unfortunate situation.

The Embassy of Japan avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.



6a

Letter From the Department of State to the United States  
District Court for the Eastern District of Pennsylvania  
June 9, 1975

Department of State  
Washington, D.C.

Clerk  
United States District Court  
U.S. District Court House  
9th and Market Street  
Philadelphia, Pennsylvania 19107

June 9, 1975

Dear Sir:

The Embassy of Japan has requested in a diplomatic note that the Department of State transfer to the court a statement of the Ministry of International Trade and Industry (MITI) of the Government of Japan in connection with two cases before the court, namely, *National Union Electronic Corp. v. Matsushita Electric Industrial Co., Ltd. et al.* (Civil Action No. 74-3247) and *Zenith Radio Corp. v. Matsushita Electric Co., Ltd. et al.* (Civil Action No. 74-2451). Copies of MITI's statement and the diplomatic note received from the Japanese Embassy are enclosed.

In carrying out this request of the Embassy of Japan, neither the Department of State nor the United States Government takes any position on the content of the statement or on any other aspect of the litigation in question.

Sincerely,

/s/ Phillip R. Trimble  
Phillip R. Trimble  
Assistant Legal Adviser for  
Economic and Business Affairs

7a

Enclosures:

- (1) Statement of the Japanese Ministry of International Trade and Industry
- (2) Diplomatic Note from the Embassy of Japan dated April 25, 1975.

**Letter From the Embassy of Japan to the Department of  
State, April 25, 1975**

April 25, 1975

E-21

The Embassy of Japan presents its compliments to the Department of State and has the honor to ask the latter to transfer to the United States District Court for Eastern District of Pennsylvania the attached statement concerning the two lawsuits between National Union Electric Corporation v. Matsushita Electric Industrial Co., Ltd. et al. (Civil Action No. 74-3247); and Zenith Radio Corporation v. Matsushita Electric Co., Ltd. et al. (Civil Action No. 74-2451).

Attachment

**Statement of the Ministry of International Trade and  
Industry (MITI Statement)**

The Ministry of International Trade and Industry of the Japanese Government ("MITI") has become aware that a number of Japanese television manufacturers and exporters are being sued by National Union Electric Corporation and Zenith Radio Corporation in the United States District Court for the Eastern District of Pennsylvania for alleged violations of various United States antitrust and anti-dumping laws in connection with their sales of television sets for export to the United States. (National Union Electric Corporation v. Matsushita Electric Industrial Co., Ltd., et al., Civil Action No. 74-3247 and Zenith Radio Corporation v. Matsushita Electric Co., Ltd., et al., Civil Action No. 74-2451.) In these lawsuits, questions have been raised concerning certain agreements entered into among the Japanese defendants, as well as certain regulations of the Japan Machinery Exporters Association, both such agreements and regulations have come into existence pursuant to the direction of MITI.

MITI has the honor to express its deep interest and serious concern regarding these lawsuits which involve issues related to its foreign trade policy and to call your attention to the following:

1. In order that Japanese exports do not cause unnecessary disruptions in the national economies of Japan's trading partners, one of the basic trade policies is to assure that Japanese exporting is carried on in as orderly a manner as possible. MITI is the government organ empowered and responsible for the detailed implementation of the said basic trade policy.

Thus, Article 3 of the Law Concerning the Establishment of MITI (Law No. 275, 1952) sets forth the following administrative activities as being under the responsibility of MITI:

- (1) Promotion and adjustment of international trade and control of foreign exchange relating to international trade (Article 3, Paragraph 1);
- (2) Promotion of international cooperation in international trade and economic relations (Article 3, Paragraph 1-2).

Further, Article 4 of the Establishment Law defines the role of MITI as follows:

- (1) Planning and programing of basic policies concerning production, distribution, consumption, trading, etc. of goods (included is electric power) under its jurisdiction (Article 4, Sub-section 1, Paragraph 13);
- (2) To export and import (Article 4, Sub-section 1, Paragraph 16);
- (3) To restrict or prohibit export or import (Article 4, Sub-section 1, Paragraph 17);
- (4) To take the steps necessary to execute agreements and arrangements concerning international trade (Article 4, Sub-section 1, Paragraph 18);
- (5) To prohibit or restrict transactions, etc. in foreign exchange relating to international trade (Article 4, Sub-section 1, Paragraph 20);
- (6) To sanction exporters' agreements, importers' agreements and agreements of either

manufacturers or distributors concerning export products, to sanction matters to be complied with members of export associations or import associations (hereinafter referred to as "Association Regulations"), to sanction collective agreements among the said members and matters to be complied with members of export-import associations, and to supervise designated agencies. (Article 4, Sub-section 1, Paragraph 24);

- (7) To exercise such powers, other than those mentioned in the above items, as are placed under the jurisdiction of MITI by law (including orders issued thereunder) (Article 4, Sub-section 1, Paragraph 51).

2. Endowed with the said responsibilities and powers, MITI has developed under the law two basic procedures to achieve the aims of trade policy of the Government of Japan. The first procedure relates to MITI's regulatory powers provided for under the Export and Import Trading Law (Law No. 299, 1952) and the second relates to regulatory powers under the Foreign Exchange and Foreign Trade Control Law (Law No. 228, 1949). The purpose of the Export and Import Trading Law is to promote the sound development of foreign trade by preventing unfair export trading and by establishing an orderly system for export and import trading. The purpose of the Foreign Exchange and Foreign Trade Control Law is to promote the proper development of foreign trade by providing for the control of foreign exchange, foreign trade and other foreign transactions.

In order to promote the sound development of foreign trade MITI applies both laws as follows: If



some measures are deemed necessary to achieve the purposes mentioned above, MITI will generally first direct the relevant Japanese industry or trade association to enter into Arrangements (which include both manufacturers' agreements and association regulations) pursuant to the Export and Import Trading Law.

Where this procedure is deemed to be insufficient for the purpose of achieving these trade policy objectives (for example, where there is insufficient time to complete the contemplated arrangements), MITI will exercise its powers provided for in the Export Trade Control Order (Cabinet Order No. 378, 1949) under the Foreign Exchange and Foreign Trade Control Law, without prior direction to the industry or trade associations to enter into such Arrangements.

As stated above, such Arrangements concluded under the Export and Import Trade Law and carried out under the direction of the Minister of International Trade and Industry in order to assure orderly Japanese exportation activities are the actual implementation of MITI's trade policy itself. And since such direction by MITI, if disregarded, can be enforced by the power pursuant to the said Cabinet Order, it has in fact a compulsory power equivalent to law.

Once MITI has decided upon the trade policy measures to be taken and has directed the establishment of appropriate Arrangements under the Export and Import Trading Law for this purpose, the Japanese industries involved have in fact no alternative but to establish them. Therefore the Arrangements entered into under the Export and Import Trading Law in compliance with the direction of MITI are not private

agreements in effect and are no less than the implementation of the foreign trade policy of MITI, despite their form as agreements made among private parties.

3. With respect to the export of television sets to the United States, in 1962 MITI accurately recognized, in view of the importance of televisions as one of Japan's export products, the need for assuring their orderly exportation to avoid the possibility of trade conflicts.

Thus, MITI directed Japanese television manufacturers including the present Japanese defendants to enter into an agreement under Article 5-3 of the Export and Import Trading Law with respect to minimum prices and other matters concerning domestic transactions relating to exports to the United States, and further, directed the exporters to establish a new regulation to be observed by the members of the export association with respect to filing of export prices and other related matters, pursuant to the association's functions under Article 11, Sub-paragraph 2 of the same law regarding the same exports. MITI supervised the preparation of such agreements and regulation so that MITI's intention was correctly reflected. Such direction and supervision concerning minimum prices at which televisions could be sold for exportation to the United States and other matters were exercised continuously from 1963 until February 28, 1973 when such exporting arrangements were terminated.

4. Had the Japanese television manufacturers and exporters failed to comply with MITI's direction to establish such an agreement or regulation, MITI would have invoked its powers provided for in the

14a

Export Trade Control Order under the Foreign Exchange and Foreign Trade Control Law in order to unilaterally control television sales for export to the United States and carry out its established trade policy.

Therefore, when MITI decided the above-mentioned policy with respect to such sales and directed the television manufacturers and exporters to conclude, under the Export and Import Trade Law, such agreement and regulation relating to the minimum prices at which televisions could be sold for the United States market and other matters, the Japanese television manufacturers and exporters had no alternative but to establish the agreement and regulation in compliance with the said direction.

15a

**Certification by the Embassy of Japan, April 23, 1979**

**EMBASSY OF JAPAN**  
2520 Massachusetts Avenue, N.W.  
Washington, D.C. 20008  
(202) 234-2266

April 23, 1979

I Toshihiko Tanabe, Counselor, Embassy of Japan, hereby certify that the attached document is a true and correct copy of the official statement that was transmitted by the Embassy of Japan to the Department of State on April 25, 1975.

/s/ *T. Tanabe*  
Toshihiko Tanabe  
Counselor  
Embassy of Japan  
Washington, D.C.  
April 23, 1979

16a

Letter from the Embassy of Japan to the United States  
District Court for the Eastern District of Pennsylvania  
July 11, 1980

EMBASSY OF JAPAN  
WASHINGTON, D.C.

July 11, 1980

The Honorable  
Edward R. Becker  
United States District Court  
for the Eastern District of  
Pennsylvania  
United States Courthouse  
601 Market Street  
Room 16614  
Philadelphia, Pennsylvania 19106

Dear Sir:

I have the honor, on behalf of the Government of Japan, to inform you, Sir, of the views of the Government of Japan as *amicus curiae* in reference to the proceedings IN RE: Japanese Electronics Products Antitrust Litigation, M.D.L. 189.

This letter is to certify and reaffirm that the Ministry of International Trade and Industry ("MITI") has been, since at least 1960, and continues to be the government organ empowered and responsible for the detailed implementation of the basic trade policies of the Japanese Government.

As such, MITI was and is empowered and authorized to act for the Government of Japan in making the statement as attached to the Note Verbale dated

17a

April 25, 1975 which was delivered to the Department of State of the United States by the Embassy of Japan.

Accept, Sir, the assurances of my highest consideration.

Sincerely yours,

/s/ Yoshio Okawara  
Yoshio Okawara  
Ambassador Extraordinary  
Plenipotentiary of Japan